

SELF DETERMINATION

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SOVEREIGNTY IS DEFINED AS THE AUTHORITY TO GOVERN. THE POWERS OF GOVERNMENTS INCLUDE AMONG OTHER THINGS:

1. THE POWER TO SET UP LEGISLATURES (TRIBAL COUNCILS) WHICH CAN PASS LAWS
2. THE POWER TO SET UP COURT SYSTEMS
3. THE POWER TO PUNISH PEOPLE WHO DO NOT OBEY THE LAWS
4. THE POWER TO TAX
5. THE POWER TO GRANT MARRIAGES AND DIVORCES
6. THE POWER TO REGULATE THE ADOPTION OF CHILDREN
7. THE POWER TO ZONE PROPERTY
8. THE POWER TO REGULATE HUNTING AND FISHING

SOVEREIGNTY IS A COLLECTION OF ALL THESE ABOVE POWERS AND MORE THAT GOVERNMENTS SUCH AS THE UNITED STATES, INDIVIDUAL STATES, COUNTIES AND CITIES HAVE AND USE DAILY. INDIAN TRIBAL COMMUNITIES ARE ORGANIZED INTO GOVERNMENTS AND ACT AS SEPARATE AND DISTINCT ENTITIES ON A DAY-TO-DAY BASIS.

AWARENESS AND KNOWLEDGE OF THE FEDERAL TRUST RELATIONSHIP AND SOVEREIGN STATUS OF THE INDIAN TRIBAL COMMUNITY IS BASIC FOR SOCIAL WORKERS IN THE STUDY AND ANALYSIS OF THE PRESENT SITUATION OF INDIAN COMMUNITIES. MISUNDERSTANDING OF THESE SPECIAL CONDITIONS UNDERMINES THE RIGHTS OF INDIAN COMMUNITIES GUARANTEED THROUGH UNITED STATES TREATIES AND THE CONSTITUTION.

THE INDIAN POLICY PERIOD OF SELF-DETERMINATION BEGAN IN SPIRIT WITH THE EARLIER STATEMENT FROM THE NORTHWEST ORDINANCE OF 1787. PRESIDENT LYNDON JOHNSON RENEWED THIS PHILOSOPHY IN A SPECIAL MESSAGE TO CONGRESS IN 1968, WHEN HE PROPOSED THAT GOVERNMENTAL POLICY SHOULD HELP AMERICAN INDIAN COMMUNITIES ACHIEVE:

1. A STANDARD OF LIVING FOR AMERICAN INDIANS EQUAL TO THAT OF THE COUNTRY AS A WHOLE.
2. FREEDOM OF CHOICE: AN OPPORTUNITY FOR ALL AMERICAN INDIANS TO REMAIN IN THEIR HOME COMMUNITIES IF THEY CHOOSE, WITHOUT SURRENDERING THEIR DIGNITY; AND AN OPPORTUNITY FOR THEM TO MOVE TO THE TOWNS AND CITIES OF AMERICA, IF THEY CHOOSE, EQUIPPED WITH SKILLS THAT WILL ALLOW THEM TO LIVE IN EQUALITY AND DIGNITY.
3. FULL PARTICIPATION BY AMERICAN INDIANS IN THE LIFE OF MODERN AMERICA, WITH A FULL SHARE OF ECONOMIC OPPORTUNITIES AND SOCIAL JUSTICE.

WITHIN THIS PHILOSOPHY IS THE CONCEPT OF SELF-DETERMINATION WITHOUT TERMINATION, OR THE RIGHT OF INDIAN COMMUNITIES TO BECOME SELF-DETERMINED WITHOUT THE THREAT OF LOSING THE "TRUST RELATIONSHIP" WITH THE FEDERAL GOVERNMENT.

CURRENTLY INDIAN SELF-DETERMINATION IS DEFINED AS:

A FUNDAMENTAL CHANGE IN FEDERAL INDIAN POLICY MADE INTO LAW BY CONGRESS (SELF-DETERMINATION INDIAN EDUCATION ACT OF 1975) AND IMPLEMENTED BY THE BUREAU OF INDIAN AFFAIRS TO SPECIFICALLY RECOGNIZE THE RIGHT OF THE INDIAN PEOPLE TO DIRECT THEIR OWN DESTINIES WHILE PRESERVING THEIR STATUS WITH THE UNITED STATES GOVERNMENT.

THEREFORE, THE GOAL OF ANY NEW NATIONAL POLICY TOWARD INDIAN PEOPLE IS SUPPOSEDLY TO STRENGTHEN THE INDIANS' SENSE OF AUTONOMY WITHOUT THREATENING THEIR SENSE OF COMMUNITY.

ALTHOUGH THE CONCEPT OF INDIAN SELF-DETERMINATION HAS BEEN HEARLDED AS THE MAJOR REMEDY FOR TRIBAL COMMUNITIES TO ONCE AGAIN CONTROL AND DIRECT THEIR OWN LIVES, IT SHOULD BE POINTED OUT THAT THE SPECIFIC POLICY ENACTED BY CONGRESS (THE INDIAN SELF-DETERMINATION ACT OF 1975) ALLOWS FOR NO TRANSFER OF POWER TO TRIBES BUT ONLY THE TRANSFER OF THE DELIVERY OF SERVICES TO INDIAN COMMUNITIES BY TRIBAL GOVERNMENTS. AS A RESULT, THE INDIAN SELF-DETERMINATION PERIOD HAS BEEN IDENTIFIED BY MANY INDIAN POLICY EXPERTS AS MERELY ANOTHER CHAPTER IN THE ATTEMPT OF THE FEDERAL GOVERNMENT TO ASSIMILATE AMERICAN INDIAN COMMUNITIES.³

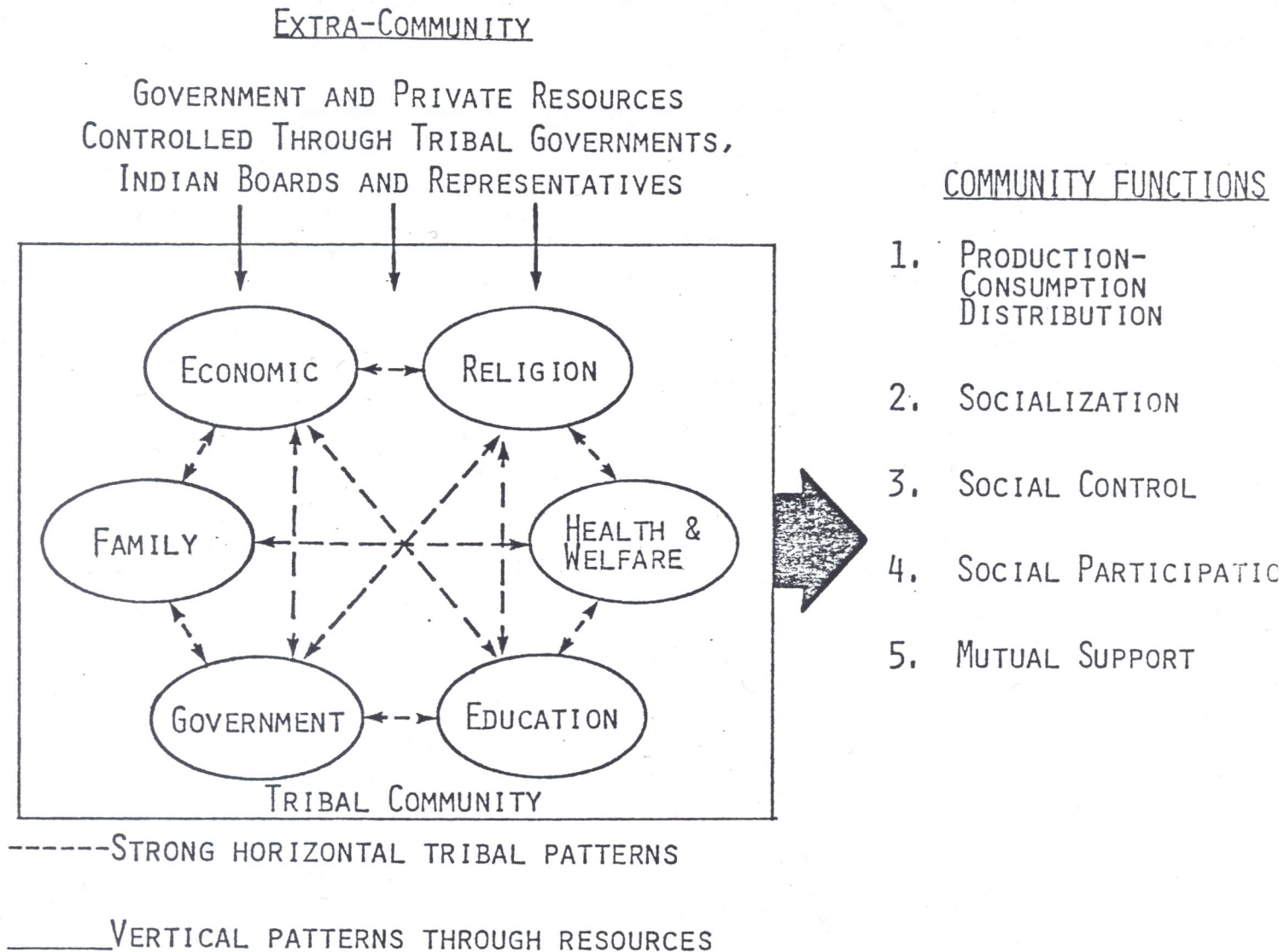
THE RIGHTS OF INDIAN COMMUNITIES TO PROVIDE AND ADMINISTER THE MAJOR COMMUNITY FUNCTIONS FOR THE WELL BEING OF THEIR INDIVIDUAL COMMUNITY MEMBERS IS SUPPORTED THROUGH THE SELF-DETERMINATION ACT OF 1975 WHICH PROVIDES A FORMULA FOR THE TRANSFER OF THE DELIVERY OF SERVICES FROM THE OUTSIDE IMPOSED BUREAUCRACIES TO INDIAN COMMUNITIES.

THE STRONG IMPOSED VERTICAL PATTERNED RELATIONSHIPS CONTROLLING INDIAN COMMUNITIES AS DEPICTED IN FIGURE IV ARE INTENDED TO BE DECREASED OVER THE NEXT FEW YEARS WHILE THE OUTSIDE GOVERNMENTAL RESOURCES GUARANTEED TO INDIAN COMMUNITIES THROUGH FORMER TREATIES AND THE UNITED STATES CONSTITUTION CONTINUE. THESE RESOURCES ARE TO BE USED IN THE SUPPORT AND STRENGTHENING OF HORIZONTAL RELATIONS BETWEEN THE MAJOR TRIBAL INSTITUTIONAL SYSTEMS WITHIN THE INDIAN COMMUNITY (SEE FIGURE V).

³REFER TO E. F. BROWN, "INDIAN SELF-DETERMINATION: A DILEMMA FOR SOCIAL WORK PRACTICE" IN F. J. PEIRCE MENTAL HEALTH SERVICES AND SOCIAL WORK EDUCATION WITH AMERICAN INDIANS. NORMAN, OKLAHOMA: UNIVERSITY OF OKLAHOMA SCHOOL OF SOCIAL WORK, 1977.

FIGURE V

INDIAN TRIBAL COMMUNITY RELATIONSHIPS THROUGH SELF-DETERMINATION CONCEPT



THE STRENGTHENING OF TRIBAL COMMUNITIES AS SOVEREIGN GOVERNMENTS FOR THE DEVELOPMENT OF TRIBAL NATURAL RESOURCES AND BUSINESSES; THE CONTRACTING AND DELIVERY OF HEALTH AND WELFARE SERVICES BY TRIBAL ORGANIZATIONS; AND, THE ORGANIZATION OF TRIBAL SCHOOL BOARDS AND PARENT ADVISORY GROUPS, ETC., ALL INCREASE AND STRENGTHEN THE HORIZONTAL RELATIONSHIPS ESSENTIAL FOR PRODUCING STRONG INDIAN COMMUNITIES.

WITH THE EVOLVING OF THE INDIAN SELF-DETERMINATION PERIOD THERE IS MUCH WORK TO BE DONE BY TRIBAL COMMUNITIES IN ADDRESSING THE SOCIAL PROBLEMS CREATED THROUGH PRIOR "ADMINISTRATIVE OPPRESSION." INDIAN EDUCATIONAL LEVELS ARE STILL LOW, HEALTH AND WELFARE SERVICES ARE GROSSLY INADEQUATE, PRESENT HOUSING CONDITIONS CONTINUE TO BREED POOR HEALTH AND SOCIAL PROBLEMS; UNEMPLOYMENT IS THREE (3) TO FIVE (5) TIMES THE NATIONAL AVERAGE, FOSTER PLACEMENT AND ADOPTION IN NON-INDIAN COMMUNITIES IS HIGH, RESOURCE DEVELOPMENT FOR COMMUNITY BETTERMENT IS LACKING; AND, STATE-TRIBAL CONTROVERSEY OVER JURISDICTIONAL RIGHTS AND NATURAL RESOURCES CONTINUES TO INCREASE.

IN THE PAST, PROFESSIONAL SOCIAL WORKERS THROUGH MIS-UNDERSTANDING OF THE SPECIAL CONDITIONS AFFORDED INDIAN COMMUNITIES THROUGH UNITED STATES TREATIES AND THE CONSTITUTION HAVE UNDERMINED THE RIGHTS OF INDIAN COMMUNITIES. HOWEVER, EDUCATED SOCIAL WORKERS SENSITIVE TO TRIBAL CULTURES AND KNOWLEDGEABLE OF THE PRESENT LEGAL AND SOCIAL SITUATION OF INDIAN TRIBES CAN TODAY PLAY A STRONG ADVOCATE ROLE IN BEHALF OF INDIAN TRIBAL COMMUNITIES.

WITH THE PASSAGE OF TITLE XX OF THE SOCIAL SECURITY ACT AND THE NATIONAL HEALTH AND RESOURCES DEVELOPMENT ACT OF 1974 CONTROVERSEY CONCERNING TRIBAL LEGAL AND JURISDICTIONAL CONTROL OVER THE ADMINISTRATION OF HEALTH AND WELFARE SERVICES TO INDIAN COMMUNITIES HAVE BECOME MAJOR ISSUES IN WHICH FEDERAL, STATE AND TRIBAL HEALTH AND WELFARE SERVICE WORKERS HAVE BECOME INVOLVED.

BRIEFLY, THE POSITION OF INDIAN COMMUNITIES IN RESPONSE TO THIS CONTROVERSEY IS AS FOLLOWS:

1. TRIBAL COMMUNITIES PREFER TO DEAL DIRECTLY WITH THE FEDERAL GOVERNMENT ON HEALTH AND SOCIAL SERVICE MATTERS RATHER THAN THROUGH INTERMEDIATE AGENCIES OR LEVELS OF GOVERNMENT.
2. TRIBAL COMMUNITIES DESIRE TO CONTINUE TO RECEIVE HEALTH AND SOCIAL SERVICES UNDER COORDINATED PARALLEL DELIVERY SYSTEMS ADMINISTERED LOCALLY BY THEMSELVES AND THE INDIAN HEALTH SERVICE AND/OR BUREAU OF INDIAN AFFAIRS, RATHER THAN TO BE A PART OF INTEGRATED STATE DELIVERY SYSTEMS.
3. TRIBAL COMMUNITIES WANT MAXIMUM CONTROL AND AUTHORITY TO COORDINATE HEALTH AND SOCIAL SERVICE SYSTEMS.
4. TRIBAL COMMUNITIES WILL CONTINUE TO DEVELOP THEIR OWN CAPABILITIES AND ASSUME GREATER RESPONSIBILITIES FOR THE HEALTH AND SOCIAL SERVICES TO THEIR PEOPLE.

IT IS IMPORTANT FOR US TO KEEP THESE POSITIONS OF INDIAN TRIBAL COMMUNITIES IN MIND AS WE PREPARE TO ADVOCATE FOR INDIAN COMMUNITIES.

REQUIRED READINGS:

BROWN, E. F. "INDIAN SELF-DETERMINATION: A DILEMMA FOR SOCIAL WORK PRACTICE," AND LEWIS, R. "TRIBAL SOCIAL WORKER--A CHALLENGE TO CREATIVITY," IN F. J. PEIRCE MENTAL HEALTH SERVICES AND SOCIAL WORK EDUCATION WITH NATIVE AMERICANS. NORMAN, OKLAHOMA: UNIVERSITY OF OKLAHOMA, SCHOOL OF SOCIAL WORK, 1977.

100-1564

The Indian Child Welfare Act, long sought by Indians and finally approved by Congress in 1978, will protect the integrity of Indian families by eliminating abusive child welfare practices that have resulted in unwarranted Indian parent-child separations, ending discrimination that has prevented Indian parents from qualifying as foster or adoptive families, and providing Indian communities with comprehensive child welfare and family service programs.

The underlying premise of the Act is that Indian tribes, as local governments, have a vital role to play in any decision about whether Indian children should be separated from their families.

The Act provides that no placement of an Indian child who is residing or domiciled on an Indian reservation shall be valid unless made pursuant to an order of the appropriate tribal court. In the case of Indian children not residing or domiciled on the reservation,

the Act directs state courts having jurisdiction over an Indian child custody proceeding to transfer the proceeding, absent good cause to the contrary, to the appropriate tribal court upon the petition of the parents or the Indian tribe.

The Act insures that Indian families will be accorded a full and fair hearing when child placement is at issue.

To help ensure that the due process rights of Indian families are respected, the Act provides that an indigent Indian parent or custodian will have a right to court-appointed counsel in any involuntary state proceeding for foster care placement or termination of parental rights. Where state law makes no provision for such appointment, the Secretary of the Interior is authorized to pay the reasonable expenses and fees of counsel.

Other sections of the act impose standards of evidence on state court proceedings involving Indian child

placement. No foster care placements may be ordered in such proceedings unless "clear and convincing" evidence demonstrates that the continued custody of the child is likely to result in serious emotional or physical damage to the child. No termination of parental rights may be ordered in the absence of a determination supported by evidence "beyond a reasonable doubt" that the continued custody of the child by its parents would result in serious emotional or physical damage.

The Act also establishes priorities in the placement of Indian children. First preference will be given to members of the child's extended family and other preferences to homes licensed by Indian tribes or maintained by Indian people and institutions operated by Indian tribes and organizations.

Other sections of the Act authorize the Secretary of the Interior to assist Indian tribes in the establishment and operation of Indian family development programs, the objective of which will be to prevent the break-up of Indian families and to ensure that Indian children are removed from their families only as a last resort, if remedial services to help the family stay together have failed. The Act also protects an adoptive child's right to tribal membership and to benefits associated with that membership.

The major drawback of the Act is that it does not set aside any funds for tribes or other Indian agencies to develop child welfare programs and procedures. It remains urgent, therefore, to launch a major effort to secure the funding necessary to assure this transition of jurisdiction and provision of services to Indian children and families by Indian tribal courts and social service agencies. The latter must gear up their programs and services in order to make sure that no Indian children suffer needlessly during the period of transition of jurisdiction, and actively seek funding for programs to ensure the health and well-being of our children.